BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

LINDA WALLACE, Claimant, v. ALASKA AIRLINES, INC., Employer, and ACE AMERICAN INSURANCE COMPANY, Surety, Defendants.	**IC 2021-008008** **FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION** FILED JUN - 6 2022 INDUSTRIAL COMMISSION

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee John Hummel, who conducted a hearing in Boise on February 22, 2022. Claimant, Linda Wallace, was present in person; Jason S. Thompson, of Boise, represented her. David P. Gardner, of Pocatello, represented Defendant Employer, Alaska Airlines, Inc., and Defendant Surety, Ace American Insurance Company. The parties presented oral and documentary evidence. The parties did not take post-hearing depositions but submitted briefs. The matter came under advisement on May 17, 2022.

ISSUE

The issue to be decided by the Commission as the result of the hearing is:

1. Whether Claimant sustained an injury from an accident arising out of and in the course of employment.

CONTENTIONS OF THE PARTIES

Claimant, an airline attendant, injured her knee while skiing during an 18-hour layover between flights in Billings, Montana. Claimant argues that she was acting within the course and and scope of her employment pursuant to the "traveling employee" doctrine, which holds that an employee traveling for employer is covered for workers' compensation purposes "portal to portal." She further argues that her injury occurred during a foreseeable and reasonably anticipated incidental personal activity during her layover, which was not a significant personal deviation from work.

Defendants argue that Claimant's ski injury occurred during a "distinct departure" for personal business, and therefore was not covered for workers' compensation purposes. In this regard, Defendants argue that Claimant's ski trip was not a "reasonable activity" and did not provide any tangible benefit to the airline, therefore it was not in the course and scope of employment.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. Joint Exhibits A through C and F, admitted at the hearing;
3. The deposition of Claimant taken on December 8, 2021; and
4. The transcript of the hearing held on February 22, 2022.

After having considered the above evidence and the arguments of the parties, the Referee submits the following findings of fact and conclusion of law for review by the Commission.

FINDINGS OF FACT

1. **Claimant's Background**. Claimant was born on September 19, 1973, in Sandpoint, Idaho. Claimant's Dep., 8:2-5. She grew up in Sandpoint. *Id.* at 8:6-7. She has two sisters and four children. *Id.* at 8:10-12; 16-17.

2. At the time of hearing, Claimant had residences in Boise, Idaho and Boston, Massachusetts. The latter residence was a "crash pad" to facilitate her current employment with JetBlue. Tr., 13:16-14:3.

3. Claimant attended college at BYU Hawaii and North Idaho College. She is currently attending Western Governors University in a human resources management program. *Id.* at 14:7-17.

4. Prior to working for airlines, Claimant worked for twenty years as an office manager in dental practices. Claimant's Dep., 13:9-14:1.

5. **Subject Employment**. Prior to her employment with JetBlue, Claimant was an in-flight attendant with Employer. Tr.,15:1-12. Claimant began working for Employer in or about March 2016 and lasting until in or about October 2021. Claimant's Dep., 12:1-8.

6. As a flight attendant, Claimant's duties were all "safety related duties. I – I'm a flight attendant and flight crew member is a fancier way of saying it. So we do all of the security safety, customer service from boarding to deplaning." Tr., 15:15-18. With Employer, Claimant was also an in-flight trainer, so she had additional duties to train new employees. *Id.* at 15:23-25.

7. Claimant typically worked multiple days during an assignment: "Almost always multiple-day trips. I had been there over five years, so I was seniority wise I bid for the longer, better trips, longer layovers, highly sought-after destinations. We would try to go to warm places

in the winter and cool places in the summer." Tr., 17:19-23. The longest trips took four days. *Id.* at 18:1.

8. In any one day at work for Employer, Claimant completed multiple flights, typically three to five flights per day. FAA regulations required flight attendants to have at least ten hours of rest after completing a day's worth of flights. *Id.* at 18:17-23.

9. Employer had fitness/well being programs for employees. One was a weight loss program of which Claimant took advantage. Skiing was one of the physical activities for which she could earn points, in addition to other robust physical exercise activities such as swimming, jogging, walking, biking, and lifting weights. *Id.* at 33:11-35:19.

10. **Industrial Accident**. On February 27, 2021, Claimant was on an 18-hour flight layover in Billings, Montana. The layover began at 10:00 p.m. on February 26, 2021 and was scheduled to end with a return to active duty on February 27, 2021 at 5:00 p.m. Claimant had flown in the night before on a flight from Seattle. She was scheduled to return to work at 5:00 p.m. on February 27, 2021. *Id.* at 24:10-25:3; 45:13-19,

11. Reviewing her flight schedule in advance, Claimant was aware that she would have a long layover in Billings on this occasion. She planned ahead and brought ski equipment with her (except for skis and boots, which she rented) and made plans to meet up with friends to go skiing. She recalls that she and her friends: "[h]eaded to the hill, tried to get there really early, because we were going to ski, have lunch, ski a little bit more, and then, come back to the hotel and get ready for the flight that evening." *Id.* at 26:5-8.

12. Participating in skiing on this day was completely voluntary on the part of Claimant. No one associated with Employer directed her to go skiing. *Id.* at 45:10-16.

Furthermore, skiing on this occasion was not part of an employee retreat or organized activity. *Id.* at 17-20. Skiing on this occasion was not a requirement of Claimant's job. *Id.* at 21-23.

13. To pay for her ski ticket, Claimant used a program made available by Employer and Red Lodge, the Billings ski resort. By showing a boarding pass, one can get a free ticket to ski the resort. Claimant contended that she would not have gone skiing without the benefit of this program. *Id.* at 29:12-31:9.

14. Claimant was having an enjoyable morning skiing at the Red Lodge. A couple of hours into her skiing, she was headed downhill near the bottom of the mountain. She went through an area that had a little path through trees. She was passing her friend and trying to slow down and stop, until the tip of her ski stuck in a ridge and Claimant crashed. Her right leg "planted." She kept going head over heels, landing on her back, breaking the top of her ski helmet. One of her skis came off, but the right ski stayed on. Claimant immediately felt a lot of pain in her right knee. When she tried to stand up, it was apparent that something was wrong because she could not put her weight on her right foot. Her friend, Wayne Ayars, a pilot with Employer, helped her navigate down the rest of the hill to the Ski Patrol. Tr., 26:9-28:19.

15. The Ski Patrol provided Claimant with ice packs and a "little brace" for her knee. She and her friends then drove off the mountain and into downtown Billings where Claimant purchased a larger brace/sleeve for her right knee at a medical supply store. Meanwhile, she called her primary care physician in Boise who advised her that it was OK to wait to return to Boise to have her knee examined, as long as she "stayed off it." Claimant also called Employer to advise them that the accident had occurred. That evening Claimant flew back to Boise on the flight she ordinarily would have been working. Tr., 28:17-29:11.

16. Claimant provided two examples of activities that are strictly prohibited by the FAA for flight personnel to perform during layovers. One was scuba diving; the other was donating blood. These are prohibited because they will interfere with the ability to fly. *Id.* at 36:9-21. Employer did not provide guidance on other prohibited physical activities. In fact, "healthy activities are encouraged." *Id.* at 38:8-13.

17. **First Report of Injury**. Employer prepared a First Report of Injury (FROI) on March 17, 2021. It stated that the injury occurred at the Red Lodge Ski Resort in Montana on February 27, 2021 and involved "multiple injuries." Claimant's occupation was listed as a flight attendant. JE A:1.

18. **Medical Care**. The day after Claimant returned to Boise was a Sunday. She went into St. Luke's Medical Center, and describes the encounter as follows:

> It was – so, the after the accident I was able to go in on a Sunday. St. Luke's. Got an MRI. When they called me back in to come to see the doctor when I had this paperwork filled out, I was told I had a meniscus tear. The ACL was ruptured. My MCL was ruptured. And the MPFL, which I have never heard of before, it's the ligament that runs underneath your kneecap, was also ruptured. So it was nearly a complete knee blowout.[1]

19. On March 2, 2021, Claimant visited St. Luke's Family Health in Boise, where it was noted that she fell skiing February 27, 2021 at Red Lodge, Montana; that she was able to fly home to Boise that night; that she had an MRI February 28, 2021 that showed a ruptured ACL and MCL, and that she had an appointment with Orthopedist Dr. Beckman for March 11, 2021. JE C:939.

[1] The submitted exhibits did not contain a medical record corresponding to this encounter.

20. On March 11, 2021, Claimant met with Dr. Beckman who, based on the MRI, diagnosed her with a ruptured ACL, an MCL tear, an LCL sprain, and an MPFL rupture in her right knee. Dr. Beckman opined that Claimant had a good chance of "healing down," so they would put her in a brace for now. They briefly discussed an ACL reconstruction and would take it up again at her follow-up visit. Meanwhile Claimant was referred to physical therapy JE C:924.

21. At a follow-up visit on April 12, 2021, Dr. Beckman noted that Claimant had elected to proceed with conservative management for her collateral knee ligaments to scar down prior to moving forward with surgical intervention. Claimant's pain had decreased, and she had been making good progress in PT. JE C:876.

22. On May 3, 2021, Dr. Beckman observed that he recommended surgical intervention, involving an ACL reconstruction with possible meniscal debridement vs. repair. Tentative surgery date was May 25, 2021. JE C:841-842.

23. In an operative report dated May 25, 2021, Dr. Beckman noted the following findings: "There was grade 2 chondrosis involving the trochlea, lateral tibial plateau, and lateral femoral condyle. There was a lateral meniscal tear, irregular, that underwent debridement. The ACL was torn from the femoral origin with empty wall sign." JE C:687. Dr. Beckman performed the following procedures: anterior cruciate ligament reconstruction with patellar tendon allograft, right knee; lateral meniscal debridement, right knee; and nonoperative treatment of medial collateral ligament tear, right knee. There were no complications and Claimant tolerated the procedures well. *Id.* at 686.

24. Claimant presented on June 1, 2021, for her scheduled post-operative follow-up appointment. Overall, she was doing well. She was non-weight bearing on the right lower extremity and using two crutches to ambulate. Jason T. Daley, PA-C, scheduled Claimant for physical therapy. *Id.* at 651.

25. At a follow-up appointment on June 10, 2021, Claimant was doing well. PA Daley removed her sutures. Claimant was to continue with PT. *Id.* at 595.[2]

26. Dr. Beckman released Claimant to return to work with no restrictions in or about October 2021. Claimant's Dep., 37:12-21.

DISCUSSION AND FURTHER FINDINGS

27. The provisions of the Idaho Workers' Compensation Law are to be liberally construed in favor of the employee. *Haldiman v. American Fine Foods*, 117 Idaho 955, 956, 793 P.2d 187, 188 (1990). The humane purposes which it serves leave no room for narrow, technical construction. *Ogden v. Thompson*, 128 Idaho 87, 88, 910 P.2d 759, 760 (1996). Facts, however, need not be construed liberally in favor of the worker when evidence is conflicting. *Aldrich v. Lamb-Weston, Inc.*, 122 Idaho 361, 363, 834 P.2d 878, 880 (1992).

28. **Course and Scope of Employment**. It is Claimant's burden to show by a preponderance of the evidence that her accident arose out of and in the course of her employment. *Basin Land Irrigation Company v. Hat Butte Canal Company*, 114 Idaho 121, 124, 754 P.2dd 434, 437 (1988). "A person performing service in the course of the trade, business, profession or occupation of an employer" is subject to the provisions of Idaho Workers Compensation Law. I.C. § 72-204(1).

[2] No further medical records were provided for the record.

29. Claimant argues that her accident arose in the course and scope of her employment as an in-flight attendant for Employer pursuant to the Traveling Employee Rule, which holds that when "an employee's work requires him to travel away from the employer's place of business or his normal place of work, the employee is covered by workers' compensation." *Cheung v. Wasatch Electric*, 136 Idaho 895, 897, 42 P.3d 688, 690 (2002), *quoting Ridgeway v. Combined Insurance Companies of America*, 98 Idaho 410, 411-412, 565 P.2d 1367, 1368-69 (1977).

30. Another, longer formulation of the Traveling Employee Rule is as follows: "Employees whose work entails travel away from the employer's premises are held in the majority of jurisdictions to be within the course of their employment continuously during the trip, except when a distinct departure on a personal errand is shown. Thus, injuries arising out of the necessity of sleeping in hotels or eating in restaurants away from home are usually held compensable." Larson, Robinson & Larson, *Workers' Compensation Law*, 6th Ed. (2018) §8.06, 194; *see also*, *Larson's Workers Compensation*, Vol. 2, Ch. 25.

31. In *Silver Engineering Works, Inc. v. Simmons*, 180 Colo. 309, 505 P.2d 966 (1973), an analogous situation arose, albeit with more tragic consequences. The decedent/claimant, who was from Colorado, was in Mexico to assist and be trained in the operation of a continuous diffuser in a sugar plant which had been sold by his employer. During the Easter Day weekend, when the plant was shut down, decedent/claimant and coworkers drove to a remote beach to swim and fish. Unfortunately, he drowned. *Id.* The court held that the decedent/claimant "had indeed stepped aside from employment and attended to a matter of personal recreation, which was beyond that necessary to the normal ministration to needs of an

employee on a business trip." *Id.* at 180 Colo. at 311, 505 P.2 at 968. Thus, the swimming accident was outside the scope of his employment.

32. Claimant asserts that the Traveling Employee Rule covers her skiing activity on the day of the accident because the rule provides for workers' compensation coverage "portal to portal." *See*, Claimant's Opening Brief at 8. Nevertheless, this assertion is at direct odds with the Idaho Supreme Court's language in the *Ridgeway* case that recognized the Traveling Employee Rule in Idaho, as follows: "This is not to say that the traveling employee is entitled to *portal to portal* coverage while away from home. The Commission could find, for example, that an employee who is injured while engaged in non-business related activity *such as skiing* or who drowns while scuba diving during a break in a business trip had distinctly departed on a personal errand unrelated to employment." [Emphasis added.] *Ridgeway*, 98 Idaho 410, 411-412, 565 P.2d 1367, 1368-69.

33. Arguably, the language quoted above from *Ridgeway* is dicta and not strictly controlling here. Nevertheless, it provides appropriate guidance on how to interpret the Traveling Employee Rule. It recognizes that not every conceivable activity that a traveling employee might engage in is reasonable, foreseeable, and business-related for workers' compensation coverage purposes.

34. Driving to a restaurant from a hotel, for example, is reasonable and foreseeable and thus within the Traveling Employee Rule. Skiing, however, as the Court noted, is a distinct departure on a personal errand unrelated to employment. It is similar to the swimming and fishing trip in *Silver Engineering Works,* 180 Colo. 309, 503 P.2d 866. As such, Claimant's ski trip was a matter of personal recreation and was not within the course and scope of her employment.

35. Claimant suggests a business-related purpose in her skiing activity in that she was skiing for free based upon a voucher program sponsored by Employer. Nevertheless, that program was available to anyone who could present a boarding pass to Red Lodge. It was not limited to employees of Employer. Similarly, Claimant argues that Employer's wellness programs encouraged her to engage in physical activities such as skiing, bringing it within a business-related activity. This, too, is a stretch. Claimant admitted at hearing that her skiing was a completely voluntary activity not required by Employer.

36. In conclusion, Claimant's accident does not come within the protection of the Traveling Employee Rule. Her accident was not within the course and scope of her employment.

CONCLUSION OF LAW

1. Claimant's accident is not within the course and scope of her employment.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, the Referee recommends that the Commission adopt such findings and conclusions as its own and issue an appropriate final order.

DATED this 19th day of May, 2022.

INDUSTRIAL COMMISSION

John C. Hummel

John C. Hummel, Referee

ATTEST:

Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of June, 2022, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by email transmission and regular United States Mail and Electronic mail upon each of the following:

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BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

LINDA WALLACE, Claimant, v. ALASKA AIRLINES, INC., Employer, and ACE AMERICAN INSURANCE COMPANY, Surety, Defendants.	**IC 2021-008008** **ORDER** FILED JUN - 6 2022 INDUSTRIAL COMMISSION

Pursuant to Idaho Code § 72-717, Referee John Hummel submitted the record in the above-entitled matter, together with his recommended findings of fact and conclusions of law, to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendations of the Referee. The Commission concurs with these recommendations. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusions of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1. Claimant's accident is not within the course and scope of her employment.
2. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 3rd day of June, 2022.

INDUSTRIAL COMMISSION

Aaron White, Chairman

Thomas E. Limbaugh, Commissioner

Thomas P. Baskin, Commissioner

ATTEST:

Kamerron Slay
Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of June, 2022, a true and correct copy of the foregoing **ORDER** was served by email transmission and regular United States mail upon each of the following:

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